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10/066,267	02/02/2002	Darren Edward Pieczynski		4432

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IRVING M WEINER
WEINER & BURT PC
635 N US 23
PO BOX 186
HARRISVILLE, MI 48740

EXAMINER

ROWAN, KURT C

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/066,267
Filing Date: February 02, 2002
Appellant(s): PIECZYNSKI, DARREN EDWARD

Irving Weiner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 15, 2006 appealing from the Office action mailed Oct. 19, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,979,101	MUENCHOW	11/1999
5,067,269	EPPLEY et al.	11/1991

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 8 is rejected under 35 USC 103 as being obvious over Muenchow in view of Eppley.

Claim 9 is rejected under 35 USC 102 as being anticipated by Muenchow.

(10) Response to Argument

Applicant argues that reflective and visible are not synonymous, but in this art, they are since what one sees when viewing an object is the light being reflected back from the object. As to the reflective and non-reflective surfaces of a mirror lens, both surfaces are reflective, it is just that the "reflective" surface reflects much more of the incident light than the "non-reflective" surface. Applicant argues that a tree becoming visible during daylight as the viewer does not have to be located in the direction between the tree and the sun for the tree to be visible. However, this is incorrect since it is light reflecting from the tree that makes the tree visible. The color of the tree is the wavelength of light being reflected off the tree. The Muenchow light system and waterproof sleeve are reflective since they reflect light from a flashlight to verify the position of the flag arm.

As to In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art. The statement that is illogical to maintain that a person skilled in the art would wish to have a remote power source when the power source is local within the waterproof sleeve of Muenchow is wrong since to change the power source, which has to be done more in cold weather, one skilled in the art would prefer to merely unplug one power source and plug in another rather than disassemble a waterproof sleeve to change the battery. The definition given on page 11 is not totally correct since some light can pass and some can be reflected which can be noted by reversing ones glasses and looking at the lens, some light passes through and some light is reflected, hence one can see their reflection in the glasses.

As to claim 9, applicant argues that inherent anticipation requires that the missing descriptive material is necessarily present, not merely probably or possibly. In this case the missing material is necessarily present since the enclosure of Muenchow is a reflective enclosure since it would partially prevents the passage of light and cause to change direction.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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KURT ROWAN
PRIMARY EXAMINER
GROUP 3200

Conferees:

JG 

DA 